Judge David A. Katz: Outstanding Jurist, Invaluable Colleague

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As the Chief Judge of the United States District Court for the Northern District of Ohio, it is my distinct honor and privilege to pay tribute to my beloved colleague, David Allan Katz. David and I were both appointed to the court in 1994 by President William Jefferson Clinton. Though David took senior status in 2005, he continued to carry a very substantial caseload until his death, including a very large docket of Multi-District Litigation (MDL)[1] cases, and to be actively involved in court governance. As Chief Judge of the court for almost seven years, I can say without equivocation, on behalf of myself and my colleagues, that David will be sorely missed. He was a very special person, possessed of a keen intellect, a seemingly innate sense of fairness, a lovely sense of humor, and a large dose of common sense. Each of these qualities was reflected in his interactions with his colleagues on the bench and in all aspects of carrying out his judicial responsibilities. That at least partly explains why he was such a highly valued colleague, and a respected and revered judge.

David's life experiences and professional accomplishments before joining the court especially equipped him for distinguished service. As a young child

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[1] Title 28, § 1407 of the United States Code provides, in pertinent part, that "[w]hen civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings." 28 U.S.C. § 1407(a) (2012). The MDL statute was passed in 1968. *See* Multidistrict Litigation Act of 1968, Pub. L. No. 90-296, 82 Stat. 109 (codified as amended at 28 U.S.C. § 1407). As of 1991, only about 1% of the national civil docket were part of MDL proceedings. U.S. JUDICIAL PANEL ON MULTIDISTRICT LITIG., STATISTICAL ANALYSIS OF MULTIDISTRICT LITIGATION: CUMULATIVE FROM SEPTEMBER 1968 THROUGH JUNE 30, 1991 (July 1991) (showing 2,232 pending MDL proceedings as of June 30, 1991), *in* LEGACY STATISTICS 1980–1991, http://www.jpml.uscourts.gov/sites/jpml/files/Legacy_Statistical_Reports-1980-1991-Compressed_0.pdf [https://perma.cc/J4SE-S52J]. However, by September 2015, 132,242 out of 341,813, or nearly 39%, of civil cases were part of MDL proceedings. ADMIN. OFFICE OF THE U.S. COURTS, TABLE C-1: U.S. DISTRICT COURTS—CIVIL CASES COMMENCED, TERMINATED, AND PENDING DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2015 (Sept. 2015), http://www.uscourts.gov/file/19511/download [https://perma.cc/8KLU-TR2A] (showing 341,813 pending civil cases as of September 30, 2015); U.S. JUDICIAL PANEL ON MULTIDISTRICT LITIG., MDL STATISTICS REPORT - DISTRIBUTION OF PENDING MDL DOCKETS BY DISTRICT (Sept. 2015), http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-September-15-2015.pdf [https://perma.cc/98Y9-NG5P] (showing 132,242 pending MDL proceedings as of September 15, 2015). As of December 2015, product liability cases were about 26% of the 273 pending MDL proceedings. U.S. JUDICIAL PANEL ON MULTIDISTRICT LITIG., CALENDAR YEAR STATISTICS (2015), http://www.jpml.uscourts.gov/statistics-info [https://perma.cc/MSL6-MU6F].

growing up in Findlay, Ohio, he earned money by cutting lawns in the summer and shoveling snow in the winter. When he was old enough, he also worked for his uncle at a local steel company. He excelled in high school as a student and as an athlete in both football and track. Indeed, David credited a challenge by his Latin teacher to live up to his potential with spurring him to achieve academically. To pay his college expenses at The Ohio State University, he worked in the kitchen of his fraternity house during the school year and in the brewery where his father worked during the summer. He also saved some college costs by entering The Ohio State University College of Law after completing his third year of undergraduate studies, with his first year of law school serving as the final year of college. He excelled in law school, graduating summa cum laude and Order of the Coif in 1957.[2]

After law school, David returned to Northwest Ohio with his wife Joan, whom he met, fell in love with, and married while at Ohio State. He joined the Toledo law firm of Spengler, Nathanson, Heyman, McCarthy & Durfee, now Spengler Nathanson, where he made partner and served for many years as managing partner. He had served thirty-seven consecutive years with the firm when Ohio Senators Howard Metzenbaum and John Glenn recommended to President Clinton that David be appointed a judge for the United States District Court for the Northern District of Ohio to fill a vacancy in the Western Division at Toledo.

Unlike many federal judges who spend time before their nomination as litigators in law firms, in U.S. Attorney's Offices, or in other prosecutor offices, David spent his entire career negotiating on behalf of, and advising, clients with respect to business matters, including mergers and acquisitions. Despite his stellar record and reputation as a preeminent business lawyer, he was rated unqualified by the American Bar Association's (ABA) Standing Committee on the Federal Judiciary, whose recommendations on potential candidates are taken into consideration by the President and the Senate in the nomination and review of candidates. In determining its recommendation in regard to David, the committee gave paramount consideration to the fact that he did not have trial experience.

The bar leadership of greater Toledo, familiar with David's temperament, legal skills, and work habits, perceived him to be an excellent candidate for the judgeship and fiercely challenged the ABA's recommendation. The president of the Toledo Bar Association and all of the living past presidents of that association—a total of twenty-eight—signed and sent a letter to the Senate emphasizing, among other things, David's excellent problem-solving skills and urging his confirmation.[3] Senators Metzenbaum and Glenn enthusiastically stood by their recommendation. President Clinton nominated

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[2] Michael A. Davisson, *News Work in the Old Dutch Brewery Helped David Katz as a Judge*, TOL. LEGAL NEWS (Jan. 20, 2007), https://www.toledolegalnews.com/articles/index/id/2433 [https://perma.cc/SZ92-28E8].

[3] Renisa A. Dorner & Catherine Garcia-Feehan, *Judicial Profile: Hon. David A. Katz, U.S. District Judge, Northern District of Ohio*, FED. LAW., Sept. 2012, at 24, 26.

him despite the ABA's negative recommendation, and David was confirmed by the United States Senate.

The confidence shown by Senators Metzenbaum and Glenn and President Clinton could not have been more richly rewarded than by David's service on the court. His innate personal qualities, upbringing, and, as it turned out, years of experience as a business lawyer served as outstanding preparation for service as a district judge. David came to the court with more years of experience than most new judges. He was sixty years old when he was appointed. He had been involved in many business negotiations. He had also served as a managing partner of a law firm, having to mediate the myriad of interests that are involved in running a firm.

Most of David's life had been spent working to solve problems. He had been good at it because he was a quick study, worked hard, respected people, and understood his clients' needs, as well as those of other parties. He also enjoyed problem-solving. He traced his respect for people and ability to get things done to observing his father, who worked for a brewery during the depression, serving as a leader and a business agent for his union. David watched him interact with the union members and respond to their needs. David said, "exposure to their needs and that life experience was a tremendous benefit to me because I could appreciate the labor side."[4]

David was ideally suited for the modern role of judging. While there has been some lament about the vanishing trial, the reality is that today very few cases culminate in trial.[5] Recognizing this reality, some view the judge's primary role as effectively managing the litigation so that cases may be timely, fairly, and effectively resolved through whatever means, which is most often by settlement, summary judgment, or by court order of, or voluntary, dismissal.[6] Because his law practice as a business lawyer had involved making

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[4] Davisson, *supra* note 2.

[5] *See, e.g.*, Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 459 (2004) ("The portion of federal civil cases resolved by trial fell from 11.5 percent in 1962 to 1.8 percent in 2002, continuing a long historic decline. More startling was the 60 percent decline in the absolute number of trials since the mid 1980s."); Arthur R. Miller, *The Pretrial Rush to Judgment: Are the "Litigation Explosion," "Liability Crisis," and Efficiency Clichés Eroding Our Day in Court and Jury Trial Commitments?*, 78 N.Y.U. L. REV. 982, 982 (2003) (indicating "concern that courts have extended the use of summary judgment and the motion to dismiss to resolve disputes that are better left to trial and the jury"); Martin H. Redish, *Summary Judgment and the Vanishing Trial: Implications of the Litigation Matrix*, 57 STAN. L. REV. 1329, 1330 (2005) ("Changes in the law of summary judgment quite probably explain at least a large part of the dramatic reduction in federal trials.").

[6] *See, e.g.*, Steven Baicker-McKee, *Reconceptualizing Managerial Judges*, 65 AM. U. L. REV. 353, 396–97 (2015) (concluding that judges should be required, rather than merely encouraged, to engage in active management of pretrial litigation activities); E. Donald Elliott, *Managerial Judging and the Evolution of Procedure*, 53 U. CHI. L. REV. 306, 315–16 (1986) ("Some opponents of managerial judging . . . contend that managerial judging is ineffective—or at least, that the effectiveness of managerial judging has not been

deals and resolving disputes, David quickly adapted to a role of actively managing the cases before him. He carefully determined the needs of each case after consultation with the lawyers at a pretrial conference, including the nature, extent, and timing of discovery; whether a mediation or settlement conference would be desirable during the course of the litigation; and whether the parties contemplated filing summary judgment motions.

To make sure that a case did not become bogged down by the time it took to file, respond to, and decide formal discovery motions, David provided an informal process for consulting with the parties about such disputes. He also made it clear to the parties that he was willing to help them mediate their dispute, though he was equally clear that they might prefer to have the process conducted by a mediator from our court-annexed program or a magistrate judge. Nevertheless, the lawyers and the parties often preferred him. They liked David's respectful manner, his thorough preparation, his engaging sense of humor, his ability to understand each party's concerns and needs, and his aid in helping them to define success. Of course, he did try those cases that went to trial and, by all accounts, was very good at it. In his courtroom, he treated the lawyers, parties, witnesses, and jurors with respect. By his manner, he commanded that they all treat each other that way. An ordinary party or a lay witness was treated no differently than the government or an expert witness. He created an atmosphere of basic fairness.

Beyond the cases on his regular docket, David became known nationwide as a judge who successfully handled large multi-district cases. The *Ortho Evra Products Liability Litigation*[7] involved approximately 2,000 federal cases nationwide that were consolidated before him for pretrial proceedings. That litigation involved claims that a contraceptive patch was defectively designed and that plaintiffs received inadequate warnings regarding its side effects and safety profile, causing harmful blood clots, which sometimes resulted in pulmonary embolisms, heart attacks, and strokes. He was able to resolve all of the claims before him.

His second MDL was the *ASR Hip Implant Litigation*[8] involving nearly 10,000 cases. That litigation concerned claims that the metal-on-metal artificial hip implants were defectively designed and that the plaintiffs were not provided adequate warning of its safety risks. Plaintiffs sought recovery for failure of the devices, resulting in the need to remove and replace them, as well as blood clots, strokes, and heart attacks suffered as a result of the revision surgery. Working with counsel and the parties, David was able to resolve all but about 1,500 of the lawsuits before his death. He was also

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demonstrated. Here I must respectfully part company with the loyal opposition. . . . [A]t least some managerial techniques are effective in reducing the amount of time and effort invested in processing a given case." (footnote omitted)).

[7] *See In re* Ortho Evra Prods. Liab. Litig., 422 F. Supp. 2d 1379, 1381 (J.P.M.L. 2006).

[8] *See In re* DePuy Orthopaedics, Inc., ASR Hip Implant Prods. Liab. Litig., 753 F. Supp. 2d 1378, 1380 (J.P.M.L. 2010).

working, immediately before his death, with another of our colleagues to manage and mediate more than 2,000 maritime asbestos cases remanded to our court from an MDL in the Eastern District of Pennsylvania. Both counsel for plaintiffs and counsel for defendants have been effusive in their praise of him and his special skill at working with lawyers to resolve complex and highly contested matters, as reflected by the lawyer tributes in this issue.

As outstanding as he was as a judge, he was an equally outstanding colleague. David was always willing to share ideas about ways we could become better at what we do as judges. Whether it pertained to court governance or the handling of cases, he was always willing to do more than his share. Enthusiasm and energy were his hallmarks. He also acted without fanfare. It was never about him.

Because of his wisdom and his caring and respectful manner, all of his colleagues on the court at one time or another had occasion to seek his advice. You could count on David to give you honest and thoughtful feedback. As Chief Judge, I was a special beneficiary of his counsel. I consulted with him on many things, including how to resolve difficult personnel issues and how to gain congressional support for a much-needed new courthouse in Toledo. If you had an idea, David was a good person on whom to test it out. His affirmation that something was "a good idea" went a long way with me. But I valued his feedback just as much when he said, "I don't think that is a good idea," or when he said, "Let me mull it over and get back to you." Whatever he said, I found it most often to be the feedback I needed.

Simply put, David was an outstanding judge, an invaluable colleague, and a true friend. As I and my colleagues on the court move forward, we will miss David in so many ways. I know that when I am faced with challenging decisions, I will be thinking, "What would David advise?" I am also certain that as we sit together as judges to decide matters of importance to the court, we will undoubtedly ask from time to time, "What would David say?" or "What would David do?" In so doing, we will continue to get the benefit of his wisdom.